

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MELVIN D. GILLEN,

Plaintiff,

v.

KOHN LAW FIRM S.C., JONATHAN CATTEY and  
ROBERT E. POTRZEBOWSKI JR.,

Defendants.

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ORDER

13-cv-373-wmc

This is a civil action filed by plaintiff Melvin Gillen, who is proceeding pro se. Plaintiff has paid the \$400 fee for filing this case.

The next step is for plaintiff to serve his complaint on the defendants. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that plaintiffs in civil lawsuits, even plaintiffs working without an attorney, must attend to all matters in their lawsuits quickly and diligently in order to obtain a just, speedy and inexpensive resolution of each matter, as required by Federal Rule of Civil Procedure 1. If plaintiff acts promptly, then he should be able to serve his complaint on the defendants well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint, I am enclosing with this order a copy of two documents titled "Procedure for Serving a Complaint on a Corporation, Partnership, and Unincorporated Association in a Federal Lawsuit" and "Procedure for Serving a Complaint on Individuals in a Federal Lawsuit." In addition, I am enclosing to plaintiff an extra copy of his complaint and the forms he will need to send to the defendants in accordance with the procedures set out in Option 1 of the instructions.

ORDER

IT IS ORDERED that plaintiff serve his complaint on the defendants promptly and file proof of service of his complaint as soon as he has served the defendants. (“Proof of service” is explained in the attachments.) By July 31, 2013, plaintiff is to file proof of service of his complaint on the defendants or tell the court why he cannot do so. If he does not file the proof of service or explain why he could not serve the defendants, I will order him to explain why his case should not be dismissed for lack of prosecution.

Entered this 31<sup>st</sup> day of May, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

PROCEDURE FOR SERVING A COMPLAINT ON  
A CORPORATION, PARTNERSHIP OR UNINCORPORATED ASSOCIATION  
IN A FEDERAL LAWSUIT

A plaintiff suing a corporation, partnership or unincorporated association in federal court may satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

Option One

Plaintiff may notify a defendant corporation, partnership, or association's "officer, managing or general agent or other agent authorized by appointment or law to receive service of process" in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(1). If plaintiff chooses this method of service, plaintiff must

- complete an original and one copy of a form titled "Notice of a Lawsuit and Request to Waive Service of a Summons" (blank notice forms are attached to this document);
- address a large envelope to the officer, managing or general agent or other agent and place the following documents inside:
  - a) an original and one copy of the completed notice form;
  - b) a blank form titled "Waiver of Service of Summons" (also accompanying this memorandum);
  - c) a copy of the complaint filed in federal court; and
  - d) a self-addressed, stamped envelope for the defendant's use in returning the waiver form;
- mail the envelope to the officer or agent by first-class mail or other reliable means;
- allow the defendant "a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent . . . ." (Fed. R. Civ. P. 4(d)(1)(F)).
- mail a copy of the signed waiver form to the court for filing as proof of service.

## Option Two

**Note well:** This procedure need not be followed unless a defendant refuses to complete and return a waiver form as described above.

Plaintiff may arrange to serve the defendant corporation, partnership or association with a summons and complaint. Fed. R. Civ. P. 4(h). If plaintiff chooses this method of service, plaintiff must

- obtain a signed and court-sealed summons from the clerk's office,
- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to
  - a) deliver the signed and sealed summons and a copy of the complaint to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant, Fed. R. Civ. P. 4(h)(1)(B); or
  - b) serve defendant in accordance with state law, Fed. R. Civ. P. 4(h)(1)(A); Wis. Stat. § 801.11;
- file with the court an affidavit of the person who effected service of the summons and complaint upon defendant stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant's officer, managing or general agent or any other agent authorized by appointment or by law to receive service of process, or other evidence of delivery. Fed. R. Civ. P. 4(l).

- PROCEDURE FOR SERVING A COMPLAINT ON  
INDIVIDUALS  
IN A FEDERAL LAWSUIT

A plaintiff who is allowed to proceed in a civil action brought pursuant to 42 U.S.C. § 1983 against state or county officials in their individual capacities or other individuals may satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

Option One

Plaintiff may notify each defendant in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(2). If plaintiff chooses this method of service, he must

- complete for each defendant an original and one copy of a form titled “Notice of a Lawsuit and Request to Waive Service of a Summons” (blank notice forms are attached to this document);
- address a large envelope to each individual defendant and place the following documents inside:
  - 1) an original and one copy of the completed notice form;
  - 2) a blank form titled “Waiver of Service of Summons” (also enclosed with this procedure);
  - 3) a copy of his complaint;
  - 4) a copy of the court’s order allowing plaintiff to proceed, if such an order was issued; and
  - 5) a self-addressed, stamped envelope for the defendant’s use in returning the waiver form to him;
- mail the envelope to each defendant by first-class mail or other reliable means;
- allow the defendants "a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent . . . ." (Fed. R. Civ. P. 4(d)(2)(F)).
- mail a copy of the signed waiver forms to the court for filing as proof of service.

## Option Two

**Note well:** This procedure need not be followed unless a defendant refuses to complete and return a waiver form as described above.

Plaintiff may arrange to serve each defendant personally with a summons and complaint. If plaintiff chooses this method of service, he must

- complete a summons form for each defendant (summons forms are available on request from the clerk of court);
- present the completed summons forms to the clerk of this court to obtain his signature and an imprint of the court's seal;
- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to
  - 1) deliver the signed and sealed summons and a copy of the complaint to each defendant personally; or
  - 2) leave the summons and complaint at the defendant's house with a person of suitable age and discretion who lives there with the defendant; or
  - 3) deliver the summons and complaint to an agent authorized by appointment or by law to receive service of process on the defendant's behalf; or
  - 4) serve defendant in accordance with state law, Fed. R. Civ. P. 4(h)(1)(A); Wis. Stat. § 801.11.
- file with the court an affidavit of the person who effected service of the summons and complaint upon the defendants stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant or other evidence of delivery. Fed. R. Civ. P. 4(l).